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5/22/79

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TO AMEMBASSY BUENOS AIRES PRIORITY

STATE 129815

E.O. 12065 GDS- 5/21/85 (RUSER, CLAUS W.)

TAGS: EAID, AR

SUBJECT: REIMBURSABLE DEVELOPMENT PROGRAM: ARGENTINE  
/ ARMY CIVIC ACTION PROGRAM

REF: BUENOS AIRES, 2880

1. (ENTIRE TEXT)

2. DEPARTMENT HAS GIVEN CAREFUL CONSIDERATION TO PROPOSAL MADE IN REFTEL THAT ARMY CORPS OF ENGINEERS ASSIST ARGENTINE ARMY. WE HAVE CONCLUDED THAT IT IS NOT IN OUR BEST INTERESTS TO BE RESPONSIVE NOW TO SUGGESTIONS FROM THE ARGENTINE ARMY THAT WE ENGAGE IN MILITARY - TO - MILITARY EXCHANGES OF THE SORT THAT COULD BE ANTICIPATED IN CORPS OF ENGINEERS ASSISTANCE TO SWAMP DRAINAGE PROJECT.

3. DEPARTMENT HAD CONSIDERED POSSIBILITY OF UNDERTAKING PROPOSED EXCHANGE UNDER REIMBURSABLE ASSISTANCE PROGRAM. WHILE STRICT LEGAL GUIDELINES WOULD HAVE PERMITTED SUCH A PROGRAM, WE BELIEVE THAT HUMAN RIGHTS POLICY CONSIDERATIONS PRECLUDE MILITARY-TO-MILITARY EXCHANGE OF THIS NATURE AT THIS TIME. CHRISTOPHER

ARGENTINA PROJECT (S200000044)

U.S. DEPT. OF STATE, A/RPS/IPS

Margaret P. Grafeld, Director

(X) Release ( ) Excise ( ) Deny

Exemption(s):

Declassify: ( ) In Part (X) In Full

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Date Declassify on Reason

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THE ASSOCIATION OF THE BAR  
OF THE CITY OF NEW YORK

Report of the Mission  
of Lawyers to Argentina  
April 1-7, 1979

ARGENTINA PROJECT (S200000044)

U.S. DEPT. OF STATE, A/RPS/IPS

Margaret P. Grafeld, Director

(X) Release ( ) Excise ( ) Deny

Exemption(s):

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## Preface

This Report was submitted to the Executive Committee of The Association of the Bar of the City of New York by a mission of lawyers appointed by The Association to visit the Republic of Argentina and inquire into the independence of lawyers and the administration of justice in that country.

The mission consisted of five members. Orville H. Schell, Jr., a member of the firm of Hughes, Hubbard & Reed, former President of The Association, and currently ABA Observer to the United Nations, served as chairman. The other members of the mission were Marvin E. Frankel, a former United States District Judge for the Southern District of New York and currently a member of the firm of Proskauer Rose Goetz & Mendelsohn; Harold H. Healy, Jr., a member of the firm of Debevoise, Plimpton, Lyons & Gates, and former Secretary of The Association; Stephen L. Kass, a member of the firm of Butzel & Kass and Chairman of The Association's Committee on Inter-American Affairs; and R. Scott Greathead, an associate with the firm of Lord, Day & Lord and a member of The Association's Committee on International Human Rights.

In view of the importance of the subject matter, the Report is being made available to The Association's members and to interested members of the public.

Merrell E. Clark, Jr.  
President

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### Attachments:

Mission's List of Detained Lawyers, dated April 3, 1979

Mission's List of Disappeared Lawyers, dated April 3, 1979

Declaration of the Colegio de Abogados de Buenos Aires,  
dated August 22, 1978

THE ASSOCIATION OF THE BAR  
OF THE CITY OF NEW YORK

Report of the Mission  
of Lawyers to Argentina  
April 1-7, 1979

INTRODUCTION

In January 1979, the Executive Committee of The Association of the Bar of the City of New York, responding to reports of widespread imprisonment, disappearance and torture of lawyers and others in the Republic of Argentina, authorized the President to appoint a mission to visit Argentina and inquire into the treatment of lawyers and the administration of justice in that nation.<sup>1</sup> The principal purpose of the mission was to express The Association's concern both for the ability of lawyers to carry out their professional duties free of governmental intimidation, and for the right of all incarcerated persons to humane treatment and fair trials.

These interests have been central to The Association since its formation in 1870. During this period, The Association has spoken out at the state and national levels for judicial independence, for the right (and duty) of lawyers to represent unpopular clients, for prompt and fair trials of all incarcerated

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1. These reports were brought to The Association's attention by the Lawyers' Committee for International Human Rights, which in November 1978 asked The Association to send a delegation of lawyers to Argentina. The Lawyers Committee provided invaluable assistance in connection with the mission, particularly in supplying background materials and other relevant information. The mission wishes to note its appreciation to the Committee and its Executive Director, Michael Posner, for these efforts.

persons and for the principle that governmental officials must comply with the law in the same manner as other citizens. In recent years, The Association has supported these principles when the independence of fellow lawyers has been threatened elsewhere in the world.<sup>2</sup> This support reflects both the international character of The Association's membership<sup>3</sup> and, more fundamentally, recognition by The Association that systematic repression of lawyers -- or systematic denial of fundamental rights -- in any society ultimately threatens lawyers and the rule of law everywhere. The mission to Argentina was thus undertaken with the twin goals of reviewing the relevant facts with our colleagues in Argentina and of reaffirming these principles in the most effective way possible.

By letter dated March 2, 1979, the President of The Association, Merrell E. Clark, Jr., advised the President of Argentina of the purposes of the mission and requested that nation's cooperation in facilitating our visit. The mission was also endorsed by the American Bar Association. On March 30, 1979, The Association was told by the Argentine Embassy that the mission would be welcome in Argentina.

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2. In the past two years, The Association has sent missions of lawyers to Uruguay and South Korea, as well as Argentina. It has also investigated and reported on conditions threatening human rights and the independence of lawyers in a number of other countries, including Guinea, South Africa, Cambodia and Vietnam.

3. The Association's approximately 12,000 members include lawyers from some 38 countries, including Argentina, as well as thousands of United States lawyers with frequent professional dealings with colleagues in other nations.

Before leaving for Argentina, we reviewed materials prepared by the Lawyers Committee for International Human Rights and a number of earlier reports prepared by the International Commission of Jurists and others concerning human rights and the status of lawyers in Argentina,<sup>4</sup> as well as the Argentine Constitution,<sup>5</sup> relevant decrees and acts of the current military government,<sup>6</sup> and applicable

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4. E.g., H. Fragoso, Report on the Situation of Defense Lawyers in Argentina, March, 1975 (International Commission of Jurists, Geneva, 1975); Amnesty International, Report of an Amnesty International Mission to Argentina, 6-15 November, 1976 (London, 1977); International Commission of Jurists, "Attacks on the Independence of Judges and Lawyers in Argentina," 1 Bulletin of the Centre for the Independence of Judges and Lawyers (February, 1978); Amnesty International Report - 1978 (London, 1978); International Commission of Jurists, "Case Report on Argentina," 1 Bulletin of the Centre for the Independence of Judges and Lawyers (September, 1978).

5. Constitution of the Republic of Argentina (1853, amended 1860, 1866, 1898 and 1957), as published in English translation by the General Secretariat, Organization of American States (Washington, D. C. 1978).

6. These included the various institutional decrees issued by the Military Junta between March 24 and 26, 1976 (see, note 23, *infra*), and laws subjecting civilians to summary trials by military tribunals for certain offenses (Decree No. 21,264); outlawing some 48 political organizations (Laws Nos. 21, 322 and 21, 325); increasing the penalties for offenses relating to "subversion" (Decree No. 21,456); prohibiting the publication of news items relating to "subversion" unless officially announced (Law No. 21,338); suspending the right of workers to strike (Laws Nos. 21,261 and 21,400); and subjecting Argentine citizens to loss of citizenship for "disloyalty" to the nation or its constitution and laws (Law No. 21,795).

treaties and international accords to which Argentina is a party.<sup>7</sup> While in Argentina, we obtained and have since examined additional materials concerning recent Argentine judicial decisions<sup>8</sup> and proposals for judicial reform,<sup>9</sup> published accounts of terrorism in Argentina during the past decade<sup>10</sup> and written case histories of persons who have been abducted or jailed since March 24, 1976, when the present<sup>11</sup> military regime assumed power.

We visited Buenos Aires from April 1 through April 7, 1979 and were joined there by a delegation of the Union Internationale des Avocats (UIA) consisting of Maitre Albert

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7. See, e.g., Universal Declaration of Human Rights (1948); American Declaration of the Rights and Duties of Man (1948); and the International Covenant on Civil and Political Rights (1966).

8. Among others, the decisions of the Supreme Court in the Zamorano (August 9 and September 15, 1977), Tizio (December 15, 1977), Perez de Smith (December 21, 1978), Yanez (January 12, 1979) and Giorgi (March 3, 1979) cases.

9. See, Foro de Estudios Sobre la Administracion de Justicia, Conclusiones de la Primera Conferencia sobre la Reforma Judicial (August 25-27, 1977); and Foro materials for the Segunda Conferencia sobre la Reforma Judicial (October 12-15, 1978).

10. See, e.g., Asociacion Patriotica Argentina, Argentina y Sus Derechos Humanos (Buenos Aires 1978); and H. Fragoso, Report on the Situation of Defense Lawyers in Argentina, March, 1975, supra, note 4.

11. These consisted of written personal accounts and supporting documents given to us by relatives of detained and disappeared persons, as well as extensive lists setting forth names and other pertinent details of detentions and disappearances which have been prepared by the Asamblea Permanente por los Derechos Humanos, the Movimiento Ecumenico por los Derechos Humanos, and the Familiares de Desaparecidos y Detenidos por Razones Politicas.



Zurfluh of the French bar, President of the UIA, and Dr. Mario Scamoni of the Italian bar, Secretary General of the UIA. (A member of our mission, Mr. Healy, is also an officer of the UIA.)

During our visit we met with the country's three major bar associations, the Federacion Argentina de Colegios de Abogados (FACA), the Colegio de Abogados de Buenos Aires (the Colegio), and the Asociacion de Abogados de Buenos Aires, as well as private lawyers engaged in general corporate practice and in criminal defense litigation. We also interviewed a number of organizations devoted to the defense of human rights in Argentina, notably the Asamblea Permanente por los Derechos Humanos (the Permanent Assembly for Human Rights), as well as the Madres de la Plaza de Mayo (the Mothers of the Plaza) and families of lawyers (and others) either detained by the military government or abducted from their homes or offices. We met with, and were assisted by, the United States Ambassador to Argentina, the Hon. Raul Castro, and embassy staff concerned with the subjects of our mission. Finally, we conferred at length with the newly-appointed Argentine Minister of Justice, Alberto Rodriguez Varela, the President of the Supreme Court of Argentina, Dr. Aldofo Gabrielli, the Commander-in-Chief of the Army and member of the ruling Junta, General Roberto Viola, and legal advisors to President Jorge Rafael Videla.

We regret that the mission was unsuccessful in its efforts to arrange a meeting with the Minister of Interior, General Albano Harguindeguy, and consequently was not able to visit any prisons or detention facilities.

I. THE "STATE OF SIEGE" IN ARGENTINA

The Constitution

The Constitution of the Republic of Argentina, adopted in 1853, establishes a federal system of government, with a central government consisting of separate Legislative, Executive and Judicial branches.<sup>12</sup> The Constitution incorporates extensive guarantees of individual rights, which are similar to (if not more extensive than) those set forth in the United States Constitution and Amendments.<sup>13</sup>

Limiting these rights, Article 23 of the Argentine Constitution provides that, in the event of internal disorder or foreign attack and the consequent declaration of a "state of siege," such constitutional guarantees are suspended and the President of the Republic is empowered to make arrests or transfer citizens from one point to another within the nation.<sup>14</sup> The President, with the consent of the Senate, is

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12. See, Title I, First, Second and Third Sections, of the Constitution.

13. See, e.g., Article 14 (freedom of press, religion, teaching and learning; right of workers to dignified and equitable working conditions, equal pay for equal work, etc.; right of labor unions to strike; compulsory social security); Article 15 (slavery abolished); Article 16 (all inhabitants equal before the law); and Article 18 (no ex post facto laws; no self-incrimination; right of defense by trial; etc.).

14. Article 23 provides in its entirety:

"In the event of internal disorder or foreign attack endangering the operation of this Constitution and of the authorities created thereby, the Province or territory in which the disturbance of order exists shall be declared in a state of siege and the constitutional guarantees shall be suspended therein. But during such suspension the President of the Republic shall not convict or apply punishment upon his own authority. His power shall be limited, in such a case, with respect to persons, to arresting them or transferring them from one point of the Nation to another, if they do not prefer to leave Argentine territory."

authorized to declare a state of siege in the event of external attack.<sup>15</sup> However, in the case of internal disorder, the President may declare a state of seige on his own authority "only when the Congress is in recess, since this is a power belonging to that body."<sup>16</sup> When the President has declared a state of siege during a Congressional recess, Congress<sup>17</sup> retains the right to approve or suspend it.

Even during a state of siege, the President's power to arrest citizens is limited in two important respects. First, Article 23 of the Constitution provides that the President "shall not convict or apply punishment upon his own authority."<sup>18</sup> Second, Article 23 states that persons detained by the President may choose to leave the country, in lieu of being detained. This choice is known in Argentina as the "right of option" and has long been recognized as a fundamental and unconditional right which, by definition, continues even during a state of siege.<sup>19</sup>

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15. Article 86, ¶19; Article 53.

16. Article 86, ¶19.

17. Article 67, ¶26. Since the ruling military Junta has effectively assumed the powers of both the Executive and Legislative branches, as well as the powers of a constitutional convention, the limitations on the Executive's power to declare a state of siege are at present somewhat academic.

18. See, also, Article 95 of the Constitution, which provides:

"In no case may the President of the Nation exercise judicial functions, assume jurisdiction over pending cases, or reopen those decided".

19. See, note 14, supra.

### The Military Junta

In March 1973, after a number of years of military government, presidential and legislative elections were held in Argentina. Dr. Hector Campora was elected President and assumed office on May 25, 1973. After two months in office, President Campora resigned, leading to a new election in which General Juan Domingo Peron was elected President and his wife Maria Estela Martinez de Peron was elected Vice-President. Juan Peron died in July 1974, and his wife succeeded to the Presidency. During her Presidency, Argentine life was characterized by extremely rapid inflation, strident political demonstrations and significant terrorist violence.

On November 6, 1974, following a series of armed attacks by terrorist groups and while Congress was in recess, President Maria Estela Martinez de Peron, invoking Article 23 of the Constitution, declared a "state of siege" throughout the country. Nevertheless, the terrorist situation continued to deteriorate as individual acts of violence and mass demonstrations swept Buenos Aires and other parts of the country. The violence was aimed primarily at government, police and military personnel, prominent businessmen and well-known leftists. It emanated from three principal sources. On the left were the Montoneros, a movement at one time supported by Juan Peron, and the Ejercito Revolucionario del Pueblo (Peoples Revolutionary Army or ERP), the armed

wing of the Trotskyite Workers Revolutionary Party. On the right was the Alianza Anti-Comunista Argentina (Argentine Anti-Communist Alliance or AAA), allegedly comprised of military and police personnel and operating with at least tacit government consent.<sup>20</sup>

On March 24, 1976, a military Junta, consisting of the Commanders of the Army, Navy and Air Force, assumed control of the government. Upon taking power, the Junta announced that the state of siege would remain in effect and that a major objective of the new government would be a frontal attack on "subversion"<sup>21</sup> and the causes for its existence.<sup>22</sup> The Junta initiated a "Process of National

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20. See, H. Fragoso, supra note 4, at 6-10. The Asociacion Patriotica Argentina, a conservative organization, claims to have documented 649 instances of kidnapping or assassination by guerrilla groups from 1970 through September, 1978.

21. The Junta apparently did not regard the AAA as being among the ranks of "subversives." In August, 1976, then Foreign Minister Admiral Cesar Guzzetti stated:

"My idea of subversion is that of the left-wing terrorist organizations. Subversion or terrorism of the right is not the same thing. When the social body of the country has been contaminated by a disease that corrodes its entrails, it forms antibodies. These antibodies cannot be considered in the same way as the microbes. As the government controls and destroys the guerrilla, the action of the antibody will disappear, as is already happening. It is only a natural reaction to a sick body."

Amnesty International, Report of an Amnesty International Mission to Argentina, supra note 4, at 35.

22. Act Establishing the Purpose and Basic Objectives for the Process of National Reorganization (March 24, 1976).

Reorganization" and, in a series of decrees issued between March 24 and 26, 1976,<sup>23</sup> assumed the principal powers of the Executive and Legislative branches of the Argentine government. Congress was dissolved and the Junta declared itself the supreme organ of the nation, with the power to appoint the President, who was in turn granted the principal legislative powers formerly exercised by Congress. Acting pursuant to this power, the Junta on March 26, 1976 appointed General Jorge Rafael Videla as President of the Republic.

The Junta was also empowered to remove and appoint new members of the Supreme Court of Justice, while the President was empowered to appoint judges of the lower federal courts. By decree issued on March 24, 1976, the Junta relieved all judges of the Supreme Court and of the superior provincial courts of their duties and suspended the tenure in office of all other judges. All judicial activities

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23. See, Act for the Process of National Reorganization (March 24, 1976); Act Establishing the Purpose and Basic Objectives for the Process of National Reorganization, (March 24, 1976); Regulation for the Operation of the Military Junta, the National Executive Power and the Legislative Advisory Commission, approved by Law No. 21,256 (March 24, 1976); and Statute for the Process of National Reorganization (March 26, 1976).

were suspended for 13 days; when the courts reopened, <sup>24</sup> judges had already been replaced by the Junta. Equally important, the Junta suspended the "right of option" granted by Article 23 of the Constitution, so that persons arrested by the President could no longer elect to leave the country.<sup>25</sup>

At the same time as it was restructuring the national government, the Junta commenced what its own members describe as a "dirty war" against all types of "subversion". In this war the country's security forces adopted many of the clandestine tactics previously used by the terrorists.<sup>26</sup> Thousands of Argentine citizens suspected of having "terrorist" or "subversive" connections were arrested; many thousands more simply "disappeared" after having been abducted by persons claiming to be members of the government security forces. Those formally arrested, and some of those who initially "disappeared" and later "reappeared", were detained pursuant to Article 23 at the disposition of the National Executive Power (Poder Ejecutivo Nacional or PEN), and are known as PEN detainees or "detenidos". Those who have simply "disappeared" are called "desaparecidos".

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24. For a summary of the steps to restructure the national government taken by the Military Junta immediately following the coup on March 24, 1976, see, ICJ, "Attacks on the Independence of Judges and Lawyers in Argentina," supra note 4, at 3-5.

25. Decree No. 21,338 (March 29, 1976).

26. The newspaper La Prensa reported on September 21, 1978 that Minister of Finance Jose Martinez de Hoz told an audience in Los Angeles, California, "We have used with the terrorists the same drastic measures that they employed."

## II. THE DETENIDOS

For the first year and nine months of the "dirty war", the Junta refused to provide reliable public information as to the identity of persons formally held as PEN detainees. However, in January, 1978, following public calls for such information, the Argentine government announced that it was holding 3,472 persons under PEN detention,<sup>27</sup> and thereafter began publishing periodic lists of PEN detainees. According to information provided to date by the government, approximately 2,500 people are currently being held under PEN detention.<sup>28</sup>

With respect to detained lawyers, our concern was -- and continues to be -- the process by which these and some 2,400 other persons have been detained without charges or trials, many for three years or more. While our human concerns extended to all detained persons, our mission focused particularly on the detention of lawyers because of the effect of such detention on the independence of the bar, which we believe to be critical to the rule of law.

Prior to our departure for Argentina, we compiled a list of approximately 100 Argentine lawyers who we believed

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27. This figure was first disclosed to a delegation of the International Federation of the Rights of Man, which visited Argentina from January 18-25, 1978.

28. Approximately twice a month, the Minister of Interior now reports the numbers of persons detained and released by the Executive pursuant to its PEN authority.



were among the detenidos.<sup>29</sup> Upon our arrival in Buenos Aires on April 1, we reviewed this information with FACA's principal officers and the Chairman of FACA's "Commission for the Defense of Lawyers," Dr. Aldo G. Rocca. Dr. Rocca supplied us with additional information concerning detained (as well as disappeared) lawyers, some of which, we were told, was received as recently as two days before our arrival. On the basis of this information, we prepared a revised list of detained lawyers and delivered this list personally to Minister of Justice Alberto Rodriguez Varela on April 3, 1979.

As revised, the mission's list of detained lawyers includes the names (and places of incarceration) of 99 Argentine lawyers, who have been detained by the government for periods ranging from a few months to five years. The Minister of Justice, Dr. Rodriguez Varela, advised us he would examine this list and inform us of its accuracy to the extent that such information was available to him. A copy of the mission's list of detained lawyers, as presented to Minister Rodriguez Varela, is attached to this Report.

Three questions emerged in the course of our visit: (i) what were the grounds for the widespread and

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29. The mission compiled lists of detained and disappeared lawyers from information supplied by the International Commission of Jurists and its Centre for the Independence of Judges and Lawyers, Amnesty International, the Group des Avocats Argentins Exiles en France, the Argentine Information Service Center, the Permanent Assembly for Human Rights, the Federacion Argentina de Colegios de Abogados, as well as families of detained and disappeared lawyers.

prolonged detention of lawyers and others, and have they been adequately tested in the courts; (ii) have the limits on the Executive's Article 23 power been effectively observed; and (iii) can there be any justification at this time for continuing PEN detentions?

#### The Bases for Detention

In our interviews with General Viola, Minister of Justice Rodriguez Varela and legal advisors to President Videla, we were offered no information about the process through which particular individuals are singled out for detention, other than the fact that such decisions are made by the security forces on the basis of information available to them that a given individual is "subversive" or is linked in some unspecified way to "subversion". We were given no reason to believe that "subversion" in the lexicon of the Argentine security forces is limited to the use, or even the advocacy, of violence against the established order. Indeed, President Videla stated in January, 1978, "A terrorist is not just someone with a gun or a bomb but also someone who spreads ideas that are contrary to Western and Christian civilization."<sup>30</sup>

Not surprisingly, most of the lawyers in PEN detention have been defense lawyers, advocates for political dissidents or labor unions, or have represented detenidos or desaparecidos; a few are former judges who are thought to have dealt too leniently with accused terrorists. We are disquieted by the

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30. The Times (London), January 4, 1978.

ease with which government representatives seem to blur the distinction between those who use force in opposing the existing government, and those whose "crime" is merely to be associated with currently disfavored, i.e. "subversive", ideas: the journalist who criticizes the government in print, the former labor union activist, or the lawyer who has represented unpopular clients or causes. Although the absence of either formal charges or trials prevents us from evaluating the validity of the government's "subversion" claim for each detained lawyer, one is led inevitably to the conclusion that at least some lawyers have been detained as a result of their activities in defending clients and causes unpopular with the present government.

The inevitable result of such policies in any country is to intimidate other lawyers from risking their own practices, if not their own liberty, by representing officially disfavored clients. Indeed, in examining whether the detention of 99 lawyers without charges affects the independence of the legal profession, the perception of why lawyers have been arrested is perhaps as important as the reality. And the perception is widespread in Argentina that lawyers under PEN detention are being punished for having represented political prisoners or other clients unpopular with the Junta.

We were told, for example, that it is difficult to obtain the services of a lawyer to prosecute habeas corpus writs on behalf of missing or detained persons; when assistance is available, at no inconsiderable risk, the writs are

almost always filed on a pro se basis so that the lawyer need not sign his name or formally appear in the proceeding. The situation, we were advised, is even worse in the provinces outside of Buenos Aires, where it is nearly impossible to obtain legal representation in habeas corpus cases. One defense lawyer, in practice for more than 20 years, told us that he could no longer live in his native province because of threats on his life and property by army and police personnel, threats which he believed were motivated by his having defended students and political prisoners in judicial proceedings. Several families told us that they had been warned by government officials (in some cases, even by judges) that contacting a lawyer to pursue habeas corpus relief would serve neither their "best interests" nor those of the persons they sought to locate. One mother was certain that her son had been imprisoned merely because she sought too aggressively to learn the whereabouts of her disappeared daughter.

These problems have been exacerbated by the timorous approach of the Argentine courts to the many habeas corpus proceedings brought to test the justification for PEN detentions. As in our own practice, Argentine law permits the courts to examine into the reasonableness of the detention of an individual by governmental authority. However, judicial decisions in this area fall far short of any meaningful examination. In upholding PEN detentions, the courts have generally accepted without scrutiny the Executive's assertion,

unsupported by any facts, that the detainee has "subversive connections."

A case often cited by the lower courts is the Supreme Court's decision in the case of Hebe Margarita Tizio, a habeas corpus proceeding decided on December 15, 1977. Tizio was arrested and detained by the Executive pursuant to its PEN authority on May 14, 1976. On August 10 of that year, her father filed with the courts a petition seeking permission for his daughter to leave the country. After this petition was denied, the father commenced a habeas corpus proceeding, in which he asserted that his daughter's detention amounted to the imposition of punishment by the sole authority of the Executive and was therefore in violation of her constitutional rights.

This petition was successively denied by the courts of first and second instance and by the Supreme Court. The only fact recited by the Supreme Court in denying the petition was the Executive's assertion that Tizio was arrested because she was "linked to subversive activities." The court held that this "unequivocal assertion obligated the judicial organ to respect the sphere reserved to the political power", and that, in the absence of exceptional circumstances, the Executive's powers during a state of siege are not reviewable by the courts. We were told that the lower courts have almost uniformly followed and cited

the Tizio decision in declining to review similar habeas corpus petitions where the Executive asserts, without giving factual details, that the detainee had "connections" with "subversion".<sup>31</sup>

One court has been more assertive, namely the Federal Court of Appeals of Buenos Aires in the so-called Zamorano case (April 4, 1977). This was a habeas corpus proceeding brought on behalf of Carlos Mariano Zamorano, a well-known defense lawyer and Vice President of the Argentine League for Human Rights, who had been detained without charge or trial since December 5, 1974. In response to the Court's request for information concerning the grounds for the detention, the Minister of Interior asserted that Zamorano was being held pursuant to the legal provisions governing the state of siege; that the order for his arrest was issued for this purpose, and that the reasons for the order continued to exist. In its decision, the Court of Appeals rejected

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31. One recent case is that of Jaime Lokman, formerly a wealthy car dealer in the province of Cordoba, who has been detained without charge or trial since March 1976. Lokman's wife commenced a habeas corpus proceeding in which she challenged the detention as arbitrary and having no reasonable basis. In response to the petition, the Minister of Interior asserted without giving any factual details that Lokman was being detained under PEN because he had "connections" with "subversion." In a decision dated March 29, 1979, the Federal Court of Appeals of Cordoba unanimously denied the habeas corpus petition, ruling that the National Executive's "unequivocal" assertion obliged it "to respect the sphere reserved to the political power," and that, in the absence of exceptional circumstances, the National Executive's powers during a state of siege are not reviewable by the courts.

this response as insufficient and articulated a compelling rationale for judicial scrutiny of PEN detentions:

"It is not possible to accept the argument that the President of the Republic is alone empowered to examine the situation of those who are detained at his order. Although it is clearly beyond the scope of judicial import, it is equally clear that it is the duty of the Judiciary of the Nation to examine exceptional cases such as the present as to the reasonableness of the measures taken by the Executive and this is set out in Articles 23, 29 and 95 of the National Constitution.

"The general interest has also to be balanced by individual liberty so that it must in no way be supposed that those who are detained at the pleasure of the Executive are simply to be left to their fate and are removed beyond the scope of any review of the national judiciary, no matter how long they might be kept under arrest.

"It is self-evident that if at the end of two years' of detention of a citizen the Administration can show no other basis for this detention than the decree under which it was ordered, and if such an extended period of time has not been used diligently by the Administration to collect evidence against or in favor of the accused, this Court can only conclude that since there appear to exist no elements showing that Carlos Mariano Zamorano is particularly dangerous and in view of the time which has elapsed since his arrest, it would be unreasonable and unfounded to prolong such a situation.

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"[A]lthough it is evident that the factual information giving rise to the State of Siege continues in its entirety, this in itself is not sufficient to justify the extension of detentions for such lengthy periods of time that they transform the exceptional character of the procedure in question into what is really a penal sanction."<sup>32</sup>

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32. The decision of the Federal Court of Appeals of Buenos Aires in the Zamorano case (April 4, 1977) is quoted at length in English in ICJ, "Attacks on the Independence of Judges and Lawyers in Argentina," supra note 4, at 14.

The Court of Appeals granted the petition for habeas corpus and ordered Zamorano's immediate release. This order was appealed to the Supreme Court of the Nation, which requested further information from the Executive concerning the basis for Zamorano's detention. In September 1977, on the basis of further information supplied ex parte by the Executive, the Supreme Court reversed and sustained Zamorano's detention pursuant to PEN, which continues to this day.

On April 5, 1979, we had a frank and illuminating discussion with Supreme Court President Gabrielli. Dr. Gabrielli acknowledged that some lower courts had accepted the Executive's "generic" assertions of "subversive connections" in sustaining PEN detentions, but asserted that the Supreme Court, as in the Zamorano case, would require a more detailed response from the government to justify PEN detentions. Dr. Gabrielli stated that in the Zamorano case the government had informed the Court fully, in camera, of the defendant's "communist contacts", and that the Court was satisfied that continued detention was related to the reasons underlying the state of siege and, hence, justified. The defendant was apparently given no opportunity for a hearing to test the accuracy of the government's assertions, which were never made public or revealed to the defense counsel. Thus, even under the exceptional Supreme Court procedure followed in Zamorano, there appears to be little, if any, opportunity for a detained prisoner or his lawyer to challenge or rebut the Executive's allegations of "subversive" conduct. The problem is even



more acute in those more typical cases where courts have accepted "generic" assertions of "subversive connections" in sustaining PEN detentions.

On our return to the United States, we conducted further research into the recent decisions of the Supreme Court in habeas corpus cases. We learned that in the Yanez case (decided January 12, 1979) the Supreme Court invoked the Tizio doctrine to reverse a decision by the Federal Court of Appeals which had granted habeas corpus relief to a PEN detainee where the Executive had merely asserted that the detainee had "links with subversion". The Supreme Court ruled that, on the basis of its decisions in Tizio and related cases, "the appealed sentence must be reversed since there are now no circumstances to disqualify the exercise of the powers conferred on the Executive."

The Yanez ruling has been applied to reverse more than 100 decisions rendered by the Federal Court of Appeals of Buenos Aires during 1978 granting habeas corpus petitions brought on behalf of persons detained under PEN for two or more years. On the basis of Yanez, we are concerned that the Supreme Court may regard even the limited review afforded in Zamorano to be exceptional and that it may continue to sustain PEN detentions where the Executive simply asserts  
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that the detainee has "subversive links".

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33. In response to the Yanez ruling, the Asociacion de Abogados de Buenos Aires criticized the Supreme Court's failure to exercise "the control of the reasonableness" of PEN detentions which is "the proper function of the Judicial Power". La Nacion, March 15, 1979.

The Right of Option and Other  
Limits on the Executive Power

The Supreme Court's decision in Zamorano also rejected the Court of Appeals' holding that "the extension of detentions for such lengthy periods of time...transform[s] the exceptional character of the procedure in question into what is really a penal sanction."<sup>34</sup> A number of Argentine lawyers with whom we spoke expressed the belief (in which we concur) that the duration of PEN detentions, many of which now exceed three years, amounts to punishment by the Executive in violation of Article 23 of the Constitution. As one defense attorney and constitutional authority told us, there is at present no effective limit on the duration of PEN detentions pursuant to Article 23.

The "right of option," another constitutional limitation on the Executive's power to detain individuals under Article 23, has been curtailed by the government with little, if any, interference from the courts. In 1977 the government modified its initial outright suspension of this right. But the new law subjects any exercise of the right to elaborate procedural regulations and, finally, a veto by the President if, in his judgment, a detainee "would endanger the peace and security of the nation if permitted to leave Argentine territory."<sup>35</sup> The law also provides that a detainee cannot present a request to leave the country until 90 days after

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34. The Supreme Court first rejected this argument in the case of Ercoli, Maria Cristina (November 16, 1976).

35. Code of Criminal Procedure, Law No. 21,650 (Sept. 1, 1977).

the date of the decree ordering his detention and that, in the event his request is denied by the President (after a review process which typically requires over four months), the detainee must wait another six months before submitting a new request.

In the view of many Argentine lawyers with whom we spoke, the unconditional grant of the right of option by Article 23 of the Constitution makes the validity of these restrictions highly doubtful. Nevertheless, we were advised that the restrictions have not been successfully challenged in the courts,<sup>36</sup> despite the fact that they are being used to frustrate the desires of many PEN detainees to leave the country.<sup>37</sup> Perhaps nothing more clearly illustrates the breakdown in Argentine justice than the fact that the courts

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36. See, e.g., the Supreme Court's decision in the Ercoli case (November 16, 1976), which upheld the government's "temporary" suspension of the right of option.

37. FACA's Commission on the Defense of Lawyers informed us that, since January, 1979, the President has denied the right of option to at least two lawyers under PEN detention. As of April 1, 1979, the total number of right of option requests granted under the new procedures was, we were told, between 15-25. The current regulations governing the right of option have also frustrated the special "500 Parole Program" of the U.S. Immigration and Naturalization Service, whereby a special quota of 500 has been established for Latin American political prisoners who wish to immigrate to the U.S. According to the U.S. Embassy, as of April 3, 1979, the U.S. had issued 86 Certificates of Eligibility to Argentina PEN detainees wishing to come to the U.S. The Argentine government has denied the right of option requests of five of these detainees, and the requests of 68 others are still pending. To date, only four detainees have been allowed to travel to the U.S. under the Special Parole program.

have tolerated the prolonged detention of thousands of citizens by the Junta under the claimed authority of the very provisions of the Constitution that establish the right to leave the country in lieu of incarceration.

In sum, we believe that the grounds offered to justify many PEN detentions are highly questionable, and that the courts have failed to check arbitrary or groundless detentions by the Executive. In our view, the Executive has also gone beyond the purpose and intent of Article 23 of the Constitution by maintaining PEN detentions for such long periods of time that they effectively amount to the imposition of a penal sanction on PEN detainees, and by negating the unconditional right of option guaranteed by Article 23.

#### The Future

On the eve of our departure for Argentina, The New York Times reported President Videla's recent announcement<sup>38</sup> that "the war is over, now we must win the peace." In our meetings with General Viola and Minister of Justice Rodriguez Varela, we asked whether, since the "war" was won, it was not now time to end the PEN detentions entirely. Both General Viola and the Minister of Justice stated that the government was now reviewing the cases of PEN detainees, and that most of those persons would either be (i) liberated, (ii) transferred to the jurisdiction of the criminal courts

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38. J. de Onis, "Argentine Army Eases Iron Rule," The New York Times, March 30, 1979, at p. 1, col. 1.

and tried in accordance with law, or (iii) allowed to exercise their right of option to leave the country. General Viola expressed this as a "formal promise" and said these steps would be accomplished "soon", although perhaps not as soon as we would wish. He also added the caveat that there would remain a fourth category: a "small number" of detainees against whom there is not judicially acceptable evidence but who are "known" to the Junta to present an "extreme danger" of subversion and who thus would continue under PEN detention.

While, except for this caveat, we welcomed these statements and promises, we were given no compelling reason why all PEN detainees should not immediately be released, charged with crimes and tried in the regular civilian courts, or permitted to exercise their Article 23 right of option to leave the country.<sup>39</sup> Now that it has "won the war", we believe that this is an essential first step which the government of Argentina must make in order to "win the peace".<sup>40</sup>

### III. THE DESAPARECIDOS

If gradations of this kind are utterable, the cases of the "disappeared" persons, including a large number

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39. Presumably any former PEN detainees who were tried and convicted of crimes would be given credit for "time served" under PEN.

40. In addition to the several thousand PEN detainees, a substantial number of civilians (estimated at between 500 and 1,000) are said to be held formally by the armed services.

(Footnote Continued on Page 26)

of lawyers, constitute the most starkly brutal human rights violations in Argentina or, indeed, almost anywhere in the world that seeks to be civilized.

There is no question that since March 24, 1976, groups of armed people serving in military, police or other state security forces have abducted thousands of people, subjecting most of the victims to torture, killing many, holding others in concentration camps or other secret places, and withholding from their families and all the world word either of their whereabouts or of whether they remain alive. While thousands of these cases are precisely documented, the total of the disappeared, or desaparecidos, is not publicly known or knowable.

In early 1979, the Permanent Assembly for Human Rights submitted to President Videla a list of 4,881 persons who disappeared between 1975 and October, 1978. The Permanent Assembly claims to have sworn statements supporting

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(Footnote 40 Continued)

These persons either are awaiting military trial or have been tried and sentenced by military tribunals for offenses which recent legislation subjects to the jurisdiction of military courts. We were advised by lawyers and family members of these military prisoners that these defendants are not entitled to private counsel, that no effective defense is possible through the non-lawyer junior officers who are assigned to defend them, and that the right to an appeal in the civil courts is routinely lost (or waived) by unaware and untrained defense counsel. Military sentences of five, ten or even fifteen years of confinement are common. In view of the civilian status of these military prisoners, the limited defense available in military trials and the lengthy sentences often imposed, we believe it is appropriate to transfer all military prisoners to the civil courts along with the PEN detainees and, if necessary, to re-try de novo in the civil courts persons convicted by military tribunals.

each disappearance on this list. While this list is probably quite accurate, many informed Argentine citizens believe it is incomplete. One respected conservative columnist, writing in the Buenos Aires Herald on April 5, 1979, stated that "the real total of 'disappeared' must be much greater, at the least 10,000."<sup>41</sup> Given the undoubted reluctance of many to report the disappearance of family members to human rights groups such as the Permanent Assembly, this higher estimate is probably much closer to the truth and, in the opinion of some Argentines, may be still be too conservative.<sup>42</sup>

The grim and familiar pattern of these disappearances, with variations in detail, was recounted to us by relatives of desaparecidos, as well as by some who disappeared and were lucky enough later to "reappear". A group of armed people in civilian clothes arrives in unmarked automobiles at the home or office of the person or persons to be abducted. Others may be taken from the streets or from other public places. The armed assailants often identify themselves as security officers. No uniformed police or military personnel makes any pretense of interfering with the abductions. In

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41. J. Neilson, "The Next Big Issue", Buenos Aires Herald, April 5, 1979, at 10, col. 2.

42. Although the rate of disappearances has declined since January 1979, they still occur. The U.S. Embassy recorded 13 disappearances from January through March, although four of these individuals have since reappeared. We have been advised that at least two disappearances occurred since the mission's return to the U.S. on April 8, 1979. One of these was a leading member of the Familiares de Desaparecidos y Detenidos por Razones Politicas, one of the human rights groups with whom we met during our stay in Buenos Aires. See note 11, supra.

one particularly grisly account, we heard of the lights suddenly turned on in a movie theater, interrupting the movie in progress, while the armed group seized their target from the audience, whereupon the lights were doused and the show resumed.

In some cases husbands and wives have been taken together, sometimes with their young children, sometimes leaving young children alone to be taken in by neighbors, concierges or relatives. It appears that there is a substantial number of unaccounted for children who have been abducted or born in captivity to pregnant kidnap victims. It is widely thought, and there appears to be substantial evidence, that such children have been turned over to adoptive parents with no color of consent from any relative and without informing their families where they are or whether they are alive. <sup>43</sup>

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43. It is not uncommon to see paid advertisements placed in Argentine newspapers by parents or other relatives denouncing the disappearance of a family member and pleading for some information as to the victim's fate. One such ad appeared during our stay in Buenos Aires. The April 4, 1979 issue of La Nacion carried an appeal by the parents of a young married couple, reportedly members of the Young Communists, kidnapped on April 5, 1978. The young woman was 3 months pregnant and the ad pleads for information about "our first grandchild":

"He was to be born last October. We want to know where he is. What have they done with him? In what atmosphere is he being brought up? What fate is reserved for him?"

Only one newspaper in Argentina, the English language Buenos Aires Herald, will print such accounts as news items. The foregoing ad in La Nacion appeared as a news story in the Herald on April 5, 1979.



As a frequent incident or sequel to the abductions, the homes or offices of the victims are pillaged or destroyed. Armed groups turn up with moving vans and proceed swiftly to strip the home or office. A few places have been destroyed by fires deliberately set. The looting and destruction seem never to be impeded by uniformed law enforcement authorities, who, in one account we heard, chatted briefly with the looters before departing the premises. It appears that the booty serves as a form of added compensation for the abductors.

Who are the desaparecidos? As might be expected, they come in some substantial fraction from the ranks of those perennial targets of repression, the "subversives". People who have been, or are believed to have been, terrorists, political radicals of various kinds, critics of the regime and others perceived as somewhere on the spectrum of "deviants" are caught in the dragnet. As might also be anticipated in such operations, there appear to be "mistakes". People close or related (by marriage or otherwise) to defined targets are caught in the process. Many have been abducted for no readily ascertainable reason.

Included among the desaparecidos are, not surprisingly, lawyers who have incurred the enmity of the security forces. Before leaving for Argentina, we had compiled from several sources a tentative list of disappeared lawyers. As with our list of detained lawyers, we reviewed this list with FACA's Commission on the Defense of Lawyers promptly upon our arrival and made the necessary revisions. As revised,

our list indicates that at least 92 lawyers have "disappeared" and are presently unaccounted for (we did not include at least 10 lawyers who, while disappeared, are known to be dead).<sup>44</sup> We presented this revised list of disappeared lawyers, along with our list of detained lawyers, to Minister of Justice Rodriguez Varela during our meeting with him on April 3, 1979. A copy of this list is attached to this Report.

As is the case with detained lawyers, a very high proportion of the disappeared lawyers on our list have been involved with the defense of political dissidents, of people critical of the government, of labor organizations, of individual workers and of others who previously disappeared. While it must be said that the basic evil of disappearances is not uniquely awful for lawyers, lawyers are, in practical effect, a category of special concern for human rights purposes. Without any doubt, the risk of disappearing, along with the risk of a PEN detention, has chilled the willingness of lawyers to represent the unpopular and made the process of repression of rights far simpler for the government.

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44. A list of 23 Argentine lawyers who have been killed since 1970 (at least three while in PEN detention) is set forth in ICJ, "Attacks on the Independence of Judges and Lawyers in Argentina," supra note 4, at 21-22. See, also, the account of the murder of Guillermo Diaz Lestrem, a defense lawyer and former PEN detainee, whose body was discovered in the Fall of 1978, in "Habeas Corpses - 'Disappearing' in Argentina," Time Magazine, April 23, 1979, at 57.

The lawlessness of the whole business precludes any coherent rationale for these disappearances. There are indications that Army, Navy or Air Force corps commanders, perhaps even lesser officials, rule this subject (among others) autonomously within their assigned territories. Among the consequences are an absence of overall "standards" and obvious opportunities for vindictive caprice. We were told of cases where men torturing kidnap victims spoke with punitive hostility about the need to crush "all you lawyers," "all you psychiatrists," and the like. Incidental horrors like rapes and other forms of sadism seem not to be uncommon.

Just as it begins as the grimmest of problems, the matter of the desaparecidos concluded for us as the most depressing and disappointing aspect of our conversations with Argentine government people. In some instances, we were met with evasive, or at least less than thoroughly candid, responses. More commonly, without quite avoiding or denying the problem, the officials we met discouraged any hope that there may be forthright and effective action soon to cast light on this dark and harrowing subject.

One line that soon became familiar, put forth by prominent citizens who support the regime as well as by government representatives, was to stress (as in the case of detained persons) the recent history of terrorist violence. The period leading to and following the Junta's takeover is

referred to routinely as a time of war - or, more fully, the "dirty war." War, our interlocutors regularly reminded us, is a grim and often brutal business. There are, it was stressed, "excesses" in every war. There were excesses on "their" side, it was said, and undoubtedly on "our" side. It was too bad, but to be expected. We were disquieted to realize how routinely excesses on the two sides, where one side represents and exercises the powers of the state, were equated with each other in this fashion.

A closely related thought, expressed more than once, was that, in the turmoil of war, the problem of persons "missing in action" is recurrent and inevitable. There had been pitched battles in the "dirty war," several people explained, and it was frequently impossible to know who might have been seized or killed where or by whom. The thought seemed correct but beside the point. Our inquiry centered upon lists of people specifically identified as having been abducted at specific times from their homes or offices by armed persons appearing as an overwhelming probability to be members of military or other security forces of the state. It is irrelevant to these cases to speak of pitched battles in other places at other times involving possibly unknown, and now possibly unknowable, participants.

Much closer to the point were our conversations with General Viola and senior aides of President Videla. In

these talks, if government responsibility for the desaparecidos was not flatly acknowledged, it was also not denied. The main point, we were told, is that the problem of the disappeared is enormously "complicated" and not likely to be resolved in the near future. While these complexities may well include the difficulty of finding the facts, we were led to infer that the far more troublesome dilemma is the prospect of imagining how to disclose the horrors concealed in the untold stories of the desaparecidos, and how to absolve the subordinate officers directly responsible for those horrors.

From things that were said both outside and within the government (including General Viola's assurance that there are no - or substantially no - desaparecidos now in custody), we were led powerfully to the appalling inference that most of those who have disappeared are dead. How can this be told? How can it be explained or justified? We think there are divergent views within the government as to whether there should be any telling or explaining. But focusing on those (who may well be ascendant in the ruling group) who would wish now to confront the questions and attempt some answers, there seems to be great doubt and uneasiness about how to handle the task.

Our own view, which we presumed to submit to one or two in the official ranks, is that delay is imprudent as well as inhumane. The agony of not knowing is a cumulative

misery for those near to the disappeared. As the control of the Junta becomes clearer and less questioned (as witnessed in part by the reported decline in abductions during the first quarter of 1979),<sup>45</sup> the demand for an accounting becomes more insistent.<sup>46</sup> We suggested that it is sound political strategy, if nothing more, to anticipate the full force of this demand rather than waiting until it swells to unmanageable proportions. The thought was received courteously. We were not encouraged, however, to anticipate its imminent implementation.

Finally, a word on the role of the courts, particularly the Argentine Supreme Court, with respect to this problem. We were advised by numerous lawyers and family members (and our own review seemed to confirm) that the courts have proven essentially powerless to deal with the desaparecidos. After a person disappears, his family typically files a habeas corpus petition demanding that the government supply information as to his whereabouts and condition. The court, in turn, asks the Executive and the armed forces for such information. In virtually all cases, the Executive and each of the services replies that it has no record of the person's being detained, after which the court disclaims

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45. See note 42, supra.

46. An eloquent plea for a government accounting of the desaparecidos was made during the week of our stay by columnist James Neilson writing in the Buenos Aires Herald. See, J. Neilson, "The Next Big Issue," supra note 41.

jurisdiction and dismisses the petition. We were advised that in excess of 10,000 petitions have been dismissed for this reason alone.

From our conversation with Supreme Court President Gabrielli, we were led to feel that there is some disposition at the top judicial level to change this practice, if possible. In a recent ruling on a habeas corpus petition on behalf of 1,542 disappeared people (Perez de Smith, Ana M., et al., decided December 21, 1978), the Supreme Court once again disclaimed jurisdiction, but observed along the way that the judiciary cannot perform its mission in the service of human rights unless the "necessary conditions" -- including, presumably, disclosing the pertinent facts -- are supplied by the Executive.

While this may look from our sheltered place like a futile and plaintive appeal, it seems fairer and more accurate to see it as a modest exertion of pressure in the direction of due process.<sup>47</sup> President Videla responded to

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47. In addition to Perez de Smith, two recent Supreme Court decisions are frequently cited as examples of the Court's assertion of its independence from the Executive branch. In the Berrueta case (decided March 20, 1979), a civilian judge ordered the jailing of a non-commissioned army officer arrested for threatening a motorist with a pistol. Without informing the judge, troops reportedly acting on orders of the Army removed the defendant from the civilian jail and placed him in the custody of military authorities. Acting on the complaint of the civilian judge, the Supreme Court ordered the Army to return the defendant to the civilian jail in which he had been incarcerated. The Court did not render its opinion until it had asked for and received from the Attorney General of the Nation an opinion that the Court's consideration of the case would not conflict with the powers of the Executive. See, La Prensa, March 20, 1979; Buenos Aires Herald, March 20, 1979.

the Court on February 7, 1979, saying in part: "The normalization of the country, in all fields, with full and effective force of judicial order, is the irrenounceable purpose of the National Reorganization Process." That is, to be sure, a long way from bowing to any notion of judicial supremacy over the field of human rights. It may be taken, however, as at least an affirmation of the goal of a lawful society by the Executive. Whether the Executive -- or the military -- will be willing to take the next step and actually produce the surviving desaparecidos in court remains to be seen.

What we have said, in sum, is that the desaparecidos comprise a terrifying and still awful chapter in Argentina's (and the world's) history of human rights violations. The chapter will not begin to end until the truth is known and those still alive are either freed or charged and brought to trial in accordance with law. The government could surely take no more important action to advance the "Western civilization" it seeks to protect. We urge such a resolution at once.

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(Footnote 47 continued)

In the Giorgi case (decided February 27, 1979), the Supreme Court for the first time ordered a lower court to conduct an investigation into whether a desaparecido was in government custody. However, as in Perez de Smith, the court ruled that it had no jurisdiction over the issue, and ordered the lower court to do no more than the courts have normally done in trying to locate disappeared persons in response to habeas corpus petitions, i.e., direct inquiries to appropriate government authorities who normally deny any knowledge of the disappeared person.



#### IV. PRISON CONDITIONS AND TREATMENT

Argentina is a signatory of the United Nations' Universal Declaration of Human Rights and the American Declaration of the Rights and Duties of Man, both of which prohibit torture and inhumane confinement of individuals.<sup>48</sup> Furthermore, the Argentine Constitution specifically states that "the prisons of the nation shall be hygienic and clean, for the safe custody and not for the punishment of the prisoners confined therein."<sup>49</sup> Even under a state of siege, the Argentine Penal Code, the Code of Criminal Procedure, Legislative Decree No. 412/58 (January 14, 1958), and numerous Executive decrees prohibit death, torture and other forms of coercion, maltreatment, improper discipline or unlawful (or prolonged) detention of prisoners and specify various levels<sup>50</sup> of punishment for officials engaging in such conduct.

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48. Universal Declaration of Human Rights (1948), Article 5; American Declaration of the Rights and Duties of Man (1948), Article XXVI.

49. Article 18.

50. These are set forth and described in a memorandum submitted by the government of Argentina on August 10, 1977 to the Subcommittee on Prevention of Discrimination and Protection of Minorities of the U.N. Commission on Human Rights. See, "Question of the Human Rights of Persons Subjected to any Form of Detention or Imprisonment," U.N. Doc. E/CN.4/Sub.2/393/Add. 2 (May 17, 1978).

Notwithstanding these safeguards, the available evidence leads inescapably to the conclusion that persons operating under the authority of the Argentine government or armed forces have systematically abused, tortured and, in many cases, killed thousands of "disappeared" persons.

We were not in a position -- and did not attempt -- to verify the individual allegations of torture and misconduct in secret and admitted detention facilities which have been reported by others.<sup>51</sup> What we did learn, however, is consistent with those reports and appeared, in fact, not to be seriously disputed by informed persons (including government officials) with whom we spoke in Argentina. We are, therefore, morally certain that significant and widespread violations of Argentine law have occurred in such detention facilities and that the desaparecidos, in particular, have been subjected to conduct below the acceptable minimum for any civilized nation.

Although our stay was limited, we did meet with Argentine residents, including at least one lawyer, who had been, for periods of time, among the desaparecidos. These persons stated they had been abducted by military groups, taken blindfolded to military or police facilities and tortured by their military interrogators.

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51. See, e.g., Amnesty International, "Report of an Amnesty International Mission to Argentina," and "Amnesty International Report -- 1978," supra note 4. I.C.J., "Attacks on the Independence of Judges and Lawyers in Argentina," supra note 4.

After interrogation, a number of these persons were placed, along with others who had been similarly tortured, in narrow and unventilated pens in which the prisoners were individually chained, in rows facing each other, to cement walls and kept blindfolded or hooded with little or no water, food or medical attention. Others, more fortunate, were detained in pairs in minute (4 X 6 ft.) cells with sealed metal doors, no windows and minimal ventilation. Sanitation facilities were primitive, consisting of open latrines under direct observation (at least for women prisoners) of armed guards. Throughout the period of their incarceration, the prisoners with whom we spoke were subjected to threats and insults from their captors. Although these prisoners were later released, other family members abducted with them have not been seen or heard from since.

Other persons familiar with the condition of the desaparecidos advised us that the conditions and treatment described above have been confirmed to them by many others and that the most common forms of torture -- severe beatings, intentional near-drowning of hooded prisoners and repeated electric shocks with cattle prods over all parts of the body -- were routinely inflicted on disappeared men and women shortly after their abduction.

Although some prisoners (such as those we interviewed) were later released, most informed observers and family members with whom we spoke believe that relatively few of the remaining desaparecidos are now alive. Several persons whose children had disappeared reported visiting in March, 1979 the remains of secret military camps (one near Buenos Aires) which had recently been dismantled but which were known to have been for the incarceration and torture of "subversives." The mission was told in categorical terms by General Viola that no secret camps exist at the present time.

The information we received concerning the treatment and condition of PEN detainees -- as opposed to disappeared persons -- did not indicate the presence of widespread torture or conditions such as those endured by the desaparecidos. Nevertheless, we were advised by family members of PEN prisoners that in some prisons such prisoners are routinely paired in tiny, cramped cells (to which they are typically confined for 22-23 hours each day), permitted only the most minimal exercise, prohibited from conversing in groups larger than three, punished severely for violation of arbitrary rules and, in general, treated far worse than ordinary criminal defendants or convicts.

One note of hope we found in this area was the report that the newly-appointed Minister of Justice, Dr. Rodriguez Varela, had recently visited each of the official detention facilities operated by the government (we do not know whether such visits extended to secret facilities). Because of the Minister's stated intention to insist on lawful treatment of all prisoners under his jurisdiction, as well as the professional and academic credentials he brings to his new post, we are hopeful that his personal awareness of, and responsibility for, the treatment of prisoners (including surviving desaparecidos) will result in a prompt improvement of the conditions described above.<sup>52</sup>

V. THE ROLE OF THE BAR AND THE JUDICIARY

It is not easy to practice law in Argentina today. Lawyers whose practices involve significant labor or criminal defense representation or who have been identified with liberal causes may themselves risk arrest or disappearance if they challenge the practices described above. Lawyers from provincial centers far from Buenos Aires may not fully realize the extent of these abuses or, where they do, may

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52. We have been advised since our return that Minister of Justice Rodriguez Varela has issued a decree on prison conditions for PEN detainees which provides that the conditions and treatment of these prisoners is to be no worse than that of ordinary criminal prisoners.

feel too isolated to protest. Some with wide recognition in the profession may believe they are more effective "working within the establishment" than they would be confronting a military government with direct evidence of its illegal conduct, particularly when that conduct touches most frequently on lawyers (and families) outside of that "establishment". Others, recalling the country's earlier guerrilla unrest and uncontrolled inflation, are willing to accept what they admit are government "excesses" in the name of law and order. Still others, with family members detained or missing, may be hostages to the fear of reprisal against the individuals they seek to save.

And yet, if lawyers will not speak, who will? Can a profession dedicated to law and to legal representation, impartial hearings and humane treatment for persons alleged to violate those laws, remain silent when thousands are imprisoned, tortured or killed at the whim of state security squads? We, who have admittedly not lived through Argentina's recent history of terrorism, learned much from our colleagues concerning that difficult and frightening time. We nevertheless believe that, whatever the past provocation or the present fears, the legal profession can -- and must -- stand unequivocally for the rule of law and against the practices described in this Report.

Some in Argentina have done so. A small number of individual lawyers, almost exclusively in Buenos Aires, have represented aggrieved families in filing habeas corpus proceedings or have spoken, publicly or privately, against governmental lawlessness. Within the organized bar, the Asociacion de Abogados de Buenos Aires, has tried, with little success, to secure the release of lawyers (including its own members) arrested or abducted for representing disfavored clients. And a number of lawyers within FACA, a federation of 51 local bar associations throughout Argentina, have either striven for the release of individual lawyers or condemned specific acts of violence against the bar.

FACA, which received us most graciously during our stay, has operated primarily through its Commission for the Defense of Lawyers, which has in turn preferred to work quietly "behind the scenes" to help release individual lawyers whose arrest seemed particularly offensive. Although FACA did privately submit to President Videla in April 1978 a Declaration calling for a return of due process rights,<sup>53</sup> its overall profile in the area has clearly been low enough to avoid arousing any serious concern within the government.

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53. The declaration, entitled "Guarantees of Due Process," was issued in the City of Parana on April 15, 1978. Although the declaration was apparently communicated to President Videla, the leadership of FACA felt that it was prudent not to make it public until early 1979. See, "Clamour for Justice," Buenos Aires Herald, March 15, 1979, at 10, col. 1.

We might note that this view is by no means limited to older lawyers within the legal "establishment." Some of us met, for example, with a vigorous and active group of younger lawyers involved in the FORES studies of judicial reform in Argentina.<sup>54</sup> Here too, we learned, the scars of the guerrilla period led many of these lawyers to conclude that the horrors of the "dirty war", if not justifiable in theory, were at least necessary and were, in any event, of lesser importance than other judicial reforms<sup>55</sup> proposed at the several Mar del Plata conferences sponsored by FORES.

The themes of "judicial reform" and a future return to "the state of law" were often mentioned by Colegio and government representatives. What struck us most was the apparent acquiescence in the current state of non-law by significant numbers of our colleagues. Judicial reform, however, may have some substance. As discussed above, the Supreme Court has recently moved, however tentatively, to restore a degree of due process, and has called upon the Executive branch for assistance in locating the desaparecidos.

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54. See note 9, supra.

55. E.g., improved judicial selection procedures, expanded court facilities, increased judicial budgets and improvements in the quality of court decisions, professional discipline and legal education. We do not mean to underestimate the importance of such reforms to the administration of justice, for our own Association devotes much of its energy to these and similar concerns in the United States. However, the need for administrative reforms does not, in our view, warrant ignoring the substantive evils described in this report.



The Supreme Court's Perez de Smith decision holds some promise of a more assertive role for the judiciary and a concomitant recognition by both the Executive and the bar that all persons, even alleged "subversives", are entitled to their day in court and lawful treatment while confined. From our cordial and highly professional conversation with President Gabrielli of the Supreme Court, we came away hopeful that he and his colleagues, at least, would continue searching for ways to give substance to the principles imbedded in the Argentine Constitution, both through decisions in individual cases and through exercising the powers, albeit limited, of a theoretically coordinate branch of government.

We thought we detected a similar feeling in the new Minister of Justice and the aides to President Videla with whom we spoke. As lawyers (and, in the case of the Minister, a former law school dean), these officials seemed prepared to strive for expanded procedural safeguards in the areas of their particular authority. They could not -- and made no promise to -- effect change in any other area, particularly those under the jurisdiction of the Minister of the Interior or the armed forces.

The ingredients for progress are present in Argentina. The Supreme Court, the Minister of Justice, the President's

aides, the President (in his response to the Court in Perez de Smith) and the Commander of the Army have all pledged themselves to fair treatment for and lawful (or at least better) conduct toward the detenidos. Whether they will honor these pledges -- and also confront the issue of the desaparecidos -- will turn in part on the future role of the bar. If the bar remains timid or defensive concerning these problems, we see little hope for meaningful change in view of likely opposition to any reform within some elements of the military. If, however, the leadership and senior members of the Colegio, FACA and other bar associations were to exert their full influence, publicly and privately, to urge an immediate return to lawful conduct by all persons in authority, real change could occur rapidly. We believe there are humane and principled lawyers in Argentina who understand this need. It is to them that people of good will, in Argentina and throughout the Western world, must look for leadership as the nation seeks to restore minimum standards of decency and put an end to this awful chapter of its detenidos and desaparecidos.

When governments brutalize their citizens, depriving them of life, liberty and even the pretext of due process of law, lawyers must stand with those deprived of their rights, regardless of our agreement or disagreement with their political or social views. Where the bar most directly

involved is itself too threatened to act, lawyers elsewhere must speak for their colleagues and remind those responsible that humanity is extinguished, not advanced, by murder, torture and imprisonment without trial. If, in a different time and place, our circumstances were reversed with those of our Argentine colleagues, we would expect no less of them.

Respectfully submitted,

Orville H. Schell, Jr.

Marvin E. Frankel

R. Scott Greathead

Harold H. Healy, Jr.

Stephen L. Kass

ATTACHMENTS

April 3, 1979

LIST OF DETAINED LAWYERS

	<u>NAME</u>	<u>DATE</u>	<u>PLACE OF IMPRISONMENT</u>
1.	ACOSTA, Jose Leonardo		Parana
2.	ACOSTA, Osvaldo	29 May 78	
3.	ACOSTA MENA, Juan de Dios	15 Apr 76	Formosa (Resistencia)
4.	ALTMARK, Daniel	24 Mar 76	
5.	ARGUELLO, Maria	2 Sep 77	Cordoba
6.	ARROYOS, Cristina	24 Mar 76	Villa Devoto
7.	ASBERG, Jorge	75	Sierra Chica
8.	ASUAD, Ariel	24 Mar 76	
9.	BERENTEIN, Ruben	1 Aug 78	Moron, Province of B.A.
10.	BENAMO, Victor	27 Apr 76	Rawson
11.	BORELLA LOPEZ, Lilitana	75	
12.	BROWER de KONING, Jose	Apr 76	
13.	CACERES, Oscar	1975	
14.	CALABRO, Elba		
15.	CANADA, Carlos	24 Mar 76	Resistencia
16.	CELADA, Rolando	1976	
17.	CHAVEZ, Hector	15 Mar 76	La Plata
18.	CIARAVINO, Norberto	30 Mar 76	Cordoba
19.	CHORNI, Manuel	15 Aug 78	B. A.
20.	DIVINSKY, Daniel	1976	
21.	DIEBENBERG, Jacobo		
22.	EPSTEIN, Mauricio	1975	Resistencia
23.	FALCONE, Norma	15 Aug 78	
24.	FAVILA, Saturnio		
25.	FACHINI, Evardo (Eduardo)		

LIST OF DETAINED LAWYERS (Cont'd.)

	<u>NAME</u>	<u>DATE</u>	<u>PLACE OF IMPRISONMENT</u>
26.	FERNANDEZ, Isabel	Jan 76	
27.	FERREYRA, Oscar Alfredo		Resistencia
28.	FORESTI, Norberto		Resistencia
29.	FIDALGO, Andres		Jujuy
30.	FRAGALE de ANGUIITA, Wanda Josefa	13 Mar 76	Villo Devoto
31.	GARRAI (GARRAL), Horacio Anibal	Nov 75	La Plata
32.	GIORDANO CORTAZZO, Hector ORLANDO	9 Jun 78	Cap. Federal
33.	GERCHUNOFF, Salomon	May 77	Sierra Chica (Olavarria)
34.	GERVASONI, Rito Julio	24 Mar 74	Coronda
35.	GIGLIANO, Alejandro	Oct 75	La Plata
36.	GOGGI, Alejandro Ernesto	Jun 77	La Plata
37.	GONZALEZ, Hector Raul	May 77	Sierra Chica
38.	CORDILLO, Silvia	1976	Villa Devoto
39.	GUTIERREZ, Dr.		Sierra Chica
40.	HAIRABEDIAN, Carlos	Apr 76	Cordoba
41.	HORANE, Eduara	15 Aug 78	Ba. As.
42.	IPUCHE, Ricardo	Oct 75	
43.	IZAGUIRRE, Estela	24 Mar 76	Villa Devoto
44.	JARANA (JARAMA), Emilio Maria	16 Apr 75	
45.	JOZAMI, Eduardo Ricardo	1975	La Plata (Sierra Chica)
46.	KUNKEL, Carlos Miguel	7 Sep 75	Resistencia (Sierra Chica)
47.	LAPLASA, Rafael	1976	La Plata
48.	LAVA, Horacio	1976	Rawson
49.	LLANOS, Juan	3 Nov 74	La Plata

LIST OF DETAINED LAWYERS (Cont'd.)

	<u>NAME</u>	<u>DATE</u>	<u>PLACE OF IMPRISONMENT</u>
50.	LOPEZ FORASTIER, Leopoldo		Resistencia
51.	LOPEZ, Simon		
52.	MACCIO, Ana Maria	2 Sep 77	Cordoba
53.	MANSUR, Julio	22 Aug 76	Mercedes de San Luis
54.	MARCA, Jorge Mario Domingo	11 Nov 74	Sierra Chica
55.	MARCHESINI, Victor	24 Mar 76	Resistencia
56.	MIERA,		Gualeguaychy
57.	MERCADO LUNA, Ricardo	May 76	Sierra Chica
58.	MELUCCI, Maria Teresa	16 Apr 77	Villa Devoto
59.	MONTALVO, Maria Luisa	1976	Villa Devoto
60.	MOLTENI, Hugo (Carlos)	24 Mar 76	
61.	PALACIO, Dante Luis	Jun 77	Cordoba
62.	PALLARDINI, Jorge	12 Nov 74	Santa Cruz
63.	PANZA, Jose	Apr 76	
64.	PENA, Jose		
65.	PROL, Luis Maria	Mar 76	Sierra Chica
66.	QUIROGA, Juan Facundo	1976	Sierra Chica (Rawson) GAAEF
67.	REARTE, Ana Lucia	12 Jul 76	Villa Devoto (Cordoba)
68.	REPETTO (Santiago?)		Resistencia
69.	RIPODAS, Ricardo (Carlos)		Olavarria
70.	RODRIGUEZ, Luis	Jun 75	La Plata (Rawson)
71.	ROJO, Juan Ardeo	May 76	Sierra Chica
72.	ROMERO, Carlos	1976	Rawson
73.	ROSSI, Roberto		

LIST OF DETAINED LAWYERS (Cont'd.)

	<u>NAME</u>	<u>DATE</u>	<u>PLACE OF IMPRISONMENT</u>
74.	RUIZ TABOADA de CORVALAN, Maria Eugenia	1976	Santiago Del Estero
75.	SALVO, Ada	11 Aug 75	Villa Devoto
76.	SAN MARTIN, Rafael	28 Jun 74	La Plata (Sierra Chica)
77.	SANTOS, Jesus	24 Mar 76	Sierra Chica
78.	SCHENFELD, Enrique	Feb 76	
79.	SENAN, Elias	Aug 78	B.A.
80.	SERRA, Luis	Apr 76	La Plata (Resistencia)
81.	SORIA, Jose Arturo	May 76	
82.	TOMAS, Julio Emilio	20 Nov 75	
83.	TOMASEVICH, Luis Alberto	21 Jan 75	Coronda (Rawson)
84.	TORRES, Hugo Francisco	7 Oct 77	Resistencia
85.	TORRES MOLINA, Ramon Haracio	Apr 76	Rawson
86.	VARA, Carlos Maria	2 Dec 75	
87.	VARGAS ALVAREZ, Jose	12 Jun 76	
88.	VAZQUEZ, Jose Maria	May 76	Military Pen. at Magdalena
89.	VERGES, Juan F.	1976	La Plata
90.	VERNIER, Carlos	1976	La Plata
91.	VILLA ACEVEDO, Carlos	1976	La Plata
92.	ZAMORANO, (VEGA), Carlos Mariano	5 Dec 74	La Plata (Rawson)
93.	ZARECEANSKY, Mario	27 Jul 77	Cordoba
94.	ZIESCHANK, Carlos Manfred	1976	
95.	ZITTO,	24 Mar 76	Carcel de Villa Maria
96.	ZAPPIA, Jorge	7 Aug 76	



	<u>NAME</u>	<u>DATE</u>	<u>PLACE OF IMPRISONMENT</u>
97.	ASHUT, Enrique Mario	7-8-76	Sierra Chica
98.	AVALOS, Alberto Miguel	---	Santa Fé
99	RAFAGHELLI, Luis Anibal	9-1-77	Córdoba

April 3, 1979

LIST OF DISAPPEARED LAWYERS

	<u>PLACE OF ABDUCTION</u>	<u>DATE OF ABDUCTION</u>
1. ALAIS, Raul Hugo		July 1977
2. ALMENDRES, Carlos A.		4/10/1976
3. ALTAMIRA, Carlos	Cap Federal	28 May 1976
4. ANDREOTTI, Juan Carlos		25/10/1976
5. ANTEBI, Cesar Alberto	Cap Federal	23/7/76
6. ANTOKOLETZ, Daniel Victor	Cap Federal	10/11/76
7. ARESTIN, Salvador Manuel	Mar del Plata	July 1977
8. AYALA, Vicente Victor	Corrientes	16/2/1976
9. BERNARD, Juan Pablo	Jujay	4/4/1976
10. BERNASCONI, Maria Teresa	San Luis	
11. BERRETTO, Graciela Alicia	Cap Federal	28/12/1976
12. BETTINI, Antonio Bautista	La Plata	18/3/1977
13. BUSTAMANTE DE ARGANARAZ, Graciela	Tucuman	
14. CANDELORO, Jorge	Mar Del Plata	July 1977
15. CAPRIOLI, Carlos Alberto		Nov. 1976
16. CASSARIEGO DEL BEL, Juan Carlos	Cap Federal	16/7/77
17. CATALA, Alfredo Eduardo	Avellaneda	8/5/77
18. COURTADE, Enrique Gaston	Avellaneda	21/4/77
19. CHUA, Antonio Jorge		Oct. 1976
20. CORTAZA, Hector Giordano		7/7/78
21. DELGESO, Juan Domingo	Cap Federal	26/3/1975
22. ESPADA, Tomas		July 1977
23. ESPANA, Nestor Julio	Cap Federal	27/11/1976
24. ELENZVAIG, Luis	Cap Federal	18/3/1977
25. EVEOUZ, Manuel Hugo		Nov. 1976
26. FASSI, Roberto		30/11/1976

LIST OF DISAPPEARED LAWYERS (Cont'd.)

	<u>PLACE OF ABDUCTION</u>	<u>DATE OF ABDUCTION</u>
27. FERNANDEZ BLANCO, A.		April 1976
28. FRAGALE, Wanda	Villa Devoto	13/3/1976
29. FRESNEDA, Tomas J.	Mar de Plata	July 1977
30. GALBIATTI PAREJA, Jose Alfredo	Olavarria	12/3/1977
31. GARCIA, Hector Enrique	La Plata	13/3/1977
32. GATTO, Carlos Oscar		29/4/1976
33. GOMEZ, Conrado Higinio	Cap Federal	
34. GUBITOSI, Mario Daniel	Olavarria	24/2/1978
35. HENRIQUEZ, Hernan Jose	Cap Federal	10/1/1977
36. HERNANDEZ, Mario Angel		12/5/1976
37. HERNANDO GARCIA, Leonor		9/4/1976
38. HOCHMAN, Abraham	Cap Federal	17/8/78
39. ISRAEL, Teresa Alicia	Cap Federal	8/3/1977
40. INTELISANO, Lucila	Cap Federal	9/11/78
41. KNOBEL, Carlos		Nov. 1976
42. LESCANO, Luis Alejandro	Santiago del Estero	13/3/1976
43. LOEO		9/4/1976
44. LOPEZ, Mirta Graciela	Cap Federal	23/6/78
45. LOZANO, Elisa L.V.		
46. LUNA, Horacio Roberto		19/4/1976
47. MIGUEL, Guillermo Santiago Del Estero		23/11/76
48. MOAVRO, Horacio Roberto		29/3/1976
49. MOLINA, Dardo Francisco	Tucuman	15/12/78
50. MONTESANO DE UGANDO, E.M.	La Plata	16/10/1976
51. MOURINO, Eusebio Jesus		6/11/1976
52. NOE, Victor Jacob	Cap Federal	27/10/1976
53. ORO, Alberto	Cap Federal	Oct. 1976
54. ORTIZ DE DIAZ LESTREM, Nelly		Nov. 1976

LIST OF DISAPPEARED LAWYERS (Cont'd.)

	<u>PLACE OF ABDUCTION</u>	<u>DATE OF ABDUCTION</u>
55. OSHIRO, Oscar	Avellenedia	21/4/1977
56. PERPIGNAN, Sara		9/11/78
57. PALTAI, Rodolfo		
58. PALUDI, Osvaldo Cayetano	Cap Federal	April 1976
59. PATRIGNANI, Carlos		
60. PESCI, Eduardo		23/10/78
61. QUIETO, Roberto		Dec. 1975
62. RISSO MALBERTI, Jorge Eduardo		27/3/76
63. REBORI, Jorge Lucio	Olivos	1/2/1977
64. SAID, Elias Eduardo	Cap Federal	Nov. 1976
65. SANGIORGIO, Carlos Andres		
66. SANJURJO, Eduardo		May 1976
67. SANTUCHO, Manuela Herminia	Cap Federal	14/7/1976
68. SAUR DE GALUPPO, Maria Graciela	Sonta Fe	21/9/76
69. SPORZA, Juan Pedro		5/9/1976
70. SINIGAGLIA, Roberto	Cap Federal	13/5/1976
71. SOBEL, Hector Natalio	Cap Federal	20/5/1976
72. SOSA, Antonio		17/7/1977
73. STEINHART DE TESTE, Monica		Nov. 1976
74. SURRACO, Basilio Pablo	Cap Federal	14/3/78
75. TABOADA DE DILLON, Marta	Moreno	
76. TESTE, Jorge	Cap Federal	Nov. 1976
77. VACA NARVAJA, Hugo (Padre)	Cordoba	10/3/1976
78. VALERA, Baldomero Juan	Avellaneda (B.A.)	3/11/76
79. VALVERDE, Eduardo	Corboba	April 1976
80. VARESTIN, Salvador Manuel	Mar del Plata	July 1977
81. VAZQUEZ DE GARCIA, M.V.	La Plata	13/7/1977
82. YACUB, Mario Gerardo		Nov. 1976

		<u>PLACE OF ABDUCTION</u>	<u>DATE OF ABDUCTION</u>
83.	AOSTRI, Amado Vicente	Córdoba	10-11-76
84.	AUDAT, Abdala	Sgo. del Estero	---
85.	CHORNI, Adolfo Ernesto	---	6-26-78
86.	GALLARDO, Rodolfo Gustavo	San Francisco (Córdoba)	5-82-76
87.	MIRALLES, Ramón Julio César	Córdoba	9-16-77
88.	PODGAETZKY, Mario	San Rafael (Mendoza)	10-14-76
89.	PARETTI DE GALLARDO, Nora E.	San Francisco (Córdoba)	5-12-74
90.	PRATO, Amanda Virginia	La Plata	2-12-76
91.	TURK, Jorge Ernesto	San Salvador de Jujuy	---
92.	ZELAYARNASS, José Alfredo	San Isidro	10-6-78

## DECLARATION

The "Colegio de Abogados" of the City of Buenos Aires considers it a duty to its members, and towards the country, to give an opinion, within the area of its competence, on the period of government that ended and the new period that began on August 1st.

The Armed Forces undertook the government of the country on March 24, 1976, at a time when it was submerged in guerilla warfare and abjection, and the powers and remedies provided by the Constitution were insufficient to bring the situation under control. There was no real authority and the country had been stripped of its moral, political and economic values.

The guerilla activity had been going on for many years. It can be said to have started with the fall of the Dictator, as may be seen from the Peron-Cooke correspondence exchanged in 1956 and published in a book that should be read by all Argentines. There one can find the blueprint for the strategy and tactics of this revolutionary war of ours, which was first set in motion by the sending of many of our youngsters to Cuba, to be trained for action.

Under subsequent governments, the guerilla forces continued to grow, even though in certain cases efforts were made to combat them. The misappropriation of property commenced with an assault on the pay-roll truck of a hospital, back in 1963. Murders, including that, publicly approved from Madrid, of our heroic and exemplary President Aramburu, continued adding to the list of dead and wounded by the thousand: judges, ministers, businessmen, teachers, men under arms, workers, clergymen, policemen, women, children and men throughout the country. All this, combined with kidnapping and extortion to supply the wrongdoers with funds.

The Government thereupon created a Federal Criminal Court to investigate and punish this new type of criminal. Many of the guerilla operators were imprisoned by the courageous members of this Court, undaunted by threats that they

received. For its part, the Federal Police force, with the assistance of the provincial police, also arrested many of them, who were placed in the custody of the Courts: there were thousands, in fact so many that the Courts were unable to deal with them more rapidly or with greater dedication than they did.

On the 25th of May, 1973, all subversives were pardoned by a law of a turbulent and irresponsible nature. Once freed, they returned to their fighting positions, this time with their leader in power and his henchmen in the Government. Subversive groups collected in our historical Plaza de Mayo with their billboards and banners, and insulted members of the Armed Forces who were on duty as guards. Their leaders gave press conferences and made speeches in public. People who today complain of repression by the authorities have forgotten the origin of this violence; they seem to think that legal arguments are the only proper weapons for defending lives threatened with machine-gun bullets.

Guerilla warfare and the undermining of the economy brought anguish and suffering throughout the country. There was no safety for anyone but the criminals and their protectors. All was chaos. Presidents no longer went to work unguarded. No longer could they walk alone through the city streets; everyone of any consequence was fearful for his future. Whole towns were taken by the guerillas, barracks and hospitals were attacked, and killings were an everyday occurrence. The Federal Courts were dissolved, its members dismissed and some of them murdered. None of the Powers of State took steps to condemn this situation, neither the Judiciary which was being replaced by judges of a new type nor the Executive whose orders they carried out, nor the Legislative despite a few independent voices. Darkness had descended upon the country.

It then became clear that the regime which had returned to power had become identified with the forces of corruption.

University and schools fell into Communist hands, and worthy teachers were discharged; youth was brainwashed

with "Studies of the Argentine Social Reality", booklets based on Marxist principles; an economic structure was built up which stifled prosperity and freedom, in order to benefit those who were in power. The properties of the dispossessed passed into the hands of the newly created rich. Speculation and gambling increased. The establishment of a new church was projected. Favourites were promoted to high positions. Peculation had no limit. The so-called political power made an alliance with the so-called Union power. Between them they got hold of everything: life, honour and property of the people of Argentina.

History will irrevocably condemn all this, its instigator, and those who carried it out and profited by it. It matters not what country gives them refuge, it will be to its own discredit. Let us hope that those who have hidden them away, to the point of converting them into ghost beings, will some day pay for their action.

But the action of the Armed Forces, in filling the vacancy in authority, in an irreproachable manner even down to the last technicality, will go down in history as worthy of the praise that it has received from the freedom-loving majority of the people.

The promise was made that the past would not return, that corruption and subversion would be fought. And this promise has been kept.

Nothing in the acts of men is perfect, for all of us are imperfect. Some aspects of the action taken or not taken may be justly criticized but in essence the Armed Forces have kept their promises. The revolutionary war was on the point of being lost for almost a year. Battles were fought on street corners, along the roads and in buildings where the guerillas were hiding. Tucumán was liberated. Rebel arms and munitions factories, printing presses, hideouts, underground hospitals and a communication system all showed the organizing ability of the guerillas. What a pity the intelligence and work of the Argentines who achieved all this was not put to a better use! What a contribution they could have made to their country's prosperity!



The President has declared the war to be over, despite some terrorist action which still requires us to keep our guard up. Let us give thanks to God and to all who made it possible, members of the Armed Forces as well as civilians. As in all wars there have been dead and wounded and persons missing on both sides, subversives as well as liberators. Was not the "Ezeiza massacre" a skirmish between the revolutionary factions themselves? And are the names of the hundreds that disappeared there known? In armed combat, man risks his life and sometimes has to defend it by any means possible: that is why war is said to be dirty, and indeed one can hardly conceive such a thing as a clean war in which no mistakes nor excesses are committed. We think this has also been the case with our war; it is one of the sad consequences of subversive terrorism. We cannot approve even though we may understand how they came about. When ever it was in our power to do so, we have done everything to remedy the tragic consequences of the struggle.

But, as the war is over, and though terrorism is still present, let us now - not without reasonable precautions - take confident steps towards a greater rule of law. The period of exception, however necessary it may have been, should now start coming to an end. Let us apply the extraordinary powers provided by the Constitution in the manner in which they were intended. Pending actions should be brought to an end. Legislation in accordance with the new climate prevailing in the world should be enacted, reinforcing security, which is the victim, as well as liberty without which there can be no fruitful creation. Let us turn our attention to the great goals of humanity: a worthy life, education, social solidarity, an economy of abundance and moral plenitude. God has put us to the test during these past years. We had fallen very low, much more so than we thought. We have all suffered, and matured. We are ready to improve ourselves. We yearn for peace and concord.

And if there are still dangerous and undesirable persons confined to prison who constitute a peril to the country, let us give them the option of leaving for those countries

which gave shelter to their leaders, and which are now beginning to suffer from the same tragic disturbances that we ourselves have suffered. We believe that the Government is following this line of thought and will make progress in this direction, obtaining assurances from the host countries that such persons will be kept under observation in order to neutralize their possible future actions.

As to what may be said about us abroad, let us testify for the cause of truth and justice, and not take such criticism too seriously nor allow it to deter us from carrying out the task of rebuilding our country, which once was great and will be so again if we all strive for this.

Let us not fear political isolation nor the lack of economic assistance. This is the challenge with which history confronts the present generation. Let us not forget that the last battle is always won by truth, freedom and bravery.

Buenos Aires, August 22, 1978

ISMAEL G. MONTOVIO  
Secretario

MANUEL V. ORDOÑEZ  
Presidente